

19 December 1951

**SUBJECT: Applicability of Legislative Pay and Leave
Policies to Personnel Engaged under Contract**

1. General

- a. A meeting of an ad hoc Committee was held at the direction of the ADDA (S) on or about 15 November for the purpose of determining what policies and procedures should be followed by the Agency in the application of recently enacted pay and leave legislation to persons rendering services to the Agency under the provisions of negotiated contracts. This committee consisted of the following:

Mr. George Meloon - Acting Director of Personnel

- Administration /OPC

Administration /OSO

Office of General Counsel

- Special Contracting Officer

Personnel Office was also in attendance

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- b. The first question for consideration was whether or not the philosophies and policies inherent in the 10% pay increase was that the principle of a general increase in contractual compensation should not be entertained. The very fact that these persons are engaged under contract on an individually negotiated basis precludes the general application of a standard government pay increase formula designed for classified government employees. In any given case, the negotiated contractual salary contains an infinite number of compensation elements completely unrelated to actual services rendered. In particular contractual compensation reflects the bargaining power of the individual with respect to his unique personal qualifications rather than a determination of the worth of the actual level of performance required by the job itself. In addition, the compensation may include inducements to offset the hazards, economic insecurity, and social disadvantages of overseas clandestine employment. Accordingly, the blanket application of the government pay increase formula was deemed inappropriate.
- d. The second question for consideration was whether the graduated leave policies of the government could, should, or must be arbitrarily applied to the mass of contract personnel either

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as a limiting factor on the maximum amount of leave or on the minimum amount which should be granted

- c. The consensus of the Committee again was that the leave or lack of leave in each contract was generally attributable to the circumstances of the individual engagement and that no general revision of contracts was appropriate.

2. Specific

- a. The Committee recognized that the total body of agent personnel engaged under contract includes a considerable number of individuals who in fact are employees of CIA. These include what are now known as "Career Agents" and "Contract Employees". Although not presently distinguishable as contract employees many persons have been engaged under contract as an operational expedient necessitated by the delays inherent in securing full security clearance required for staff employment. The Committee was also aware of the current program to classify the mass of agent personnel into various categories descriptive of the actual relationships between individual and CIA and the type of services being rendered. This program has been initiated to simplify and standardize the application of Agency contractual policies and the administration of contracts but cannot be effected in the immediate future. Therefore, in recognition of the fact that certain individuals engaged under contract are sufficiently analogous to staff employees as to warrant consideration for the application of the pay and leave provisions of recent legislation, the Committee developed the recommendations and procedures set forth in subsequent paragraphs.

3. Career Agents

- a. All Career Agents will receive the benefit of the legislative pay increase in accordance with Agency regulations applicable to appointed employees provided a review of each original contract reveals that the initial salary is properly related to an appropriate GS grade and that, if the initial salary was at an in-grade level, such level was established in accordance with Agency employee appointment policies.
- b. In all cases where existent Career Agent contracts fail to establish the grade level or provide for initial employment at an unwarranted in-grade level, the Special Contracting

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Officer shall, with the approval of the Assistant Director concerned, establish an appropriate grade and in-grade level with the stipulation that no Career Agent shall suffer a decrease in compensation.

- c. Career Agents shall be entitled to the same leave provisions as staff employees with the single exception that when the leave benefits of the cover exceed those of the Agency the additional leave benefits shall be allowed at the discretion of the operating office. Contractual leave provisions in excess of those authorized under CIA employee regulations shall be brought into conformity therewith.
- d. Career Agents shall receive allowances generally in accordance with regulations applicable to agency appointed employees with such modification in the administration thereof as may be warranted by security and practical considerations.
- e. The operating offices shall secure the government service history of each Career Agent in accordance with the instructions which have been issued by the Personnel Office for the purpose of establishing the leave entitlements of each Career Agent. This information shall be set forth on the form provided for this purpose by the Personnel Office. The form may be prepared and signed by the individual or if more expedient by the appropriate Division Chief and shall be submitted to the Finance Division for purposes of administering the leave provisions of the Career Agent contract.
- f. Prior to effecting the legislative pay increases, all Career Agent contracts shall be brought into basic agreement with the policies of Part XIV of the Confidential Funds Regulations.

4. Contract Employees

- a. It is recognized that among the large body of contract agents there may be instances where individuals in fact have an employee relationship to CIA and, further, that their contractual compensation was established in reasonable conformity with that applicable to a position established by the Agency for equivalent staff employee duties.

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- b. In order not to deprive these contract employees of the benefits of the legislative pay increase, the operating offices may submit the facts supporting such employee status to the Special Contracting Officer for amendment of the contract in accordance with Part XIV of the Confidential Funds Regulations. Each case shall be reviewed by a designated representative of the Personnel Office who shall do the following:
 - (1) Determine that the services rendered are of a nature and are being performed under circumstances such as to establish the individual as an employee and to permit reasonable classification of the position.
 - (2) Determine that the present contractual salary is approximately appropriate to the base grade for an equivalent classified staff position.
- c. If the position can be fairly determined that the agent is an employee of CIA occupying a classifiable position at an appropriate salary level, the Special Contracting Officer shall prepare an appropriate contract as a Contract Employee and shall authorize the proper pay increase applicable to the position grade. Such increases will be retroactive to such date or dates as established for CIA employees.
- d. Concurrently with this review of all cases submitted for consideration of pay increase, the representative of the Personnel Office shall recommend to the Assistant Director that appropriate agents be converted to staff employee or staff agent status. If such recommendation is concurred in by the office concerned, appropriate steps shall be taken by the Personnel Office to convert the agent to the proper employment category at the earliest possible date. If it is determined that the individual cannot or should not be appointed in one of these two categories of employment, he shall remain a contract employee.
- e. In every case where the determination is made that the individual is in fact a contract employee and is eligible for the pay increase, the leave provisions of his contract shall be modified to conform with normal employee leave benefits. If the contract employee declines to accept the reduction in leave benefits, he shall be denied the pay increase.

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5. General Conclusions

In addition to the preceding recommendations of the Committee, a series of general recommendations and conclusions were reached.

- a. Earlier contracts which contain factual commitments to extend the benefits of legislative pay increases shall be honored. If no GS base was established in the contract or subsidiary files, the contractual salary shall be used as the base in applying the 10% increase. Such increase shall not exceed \$800.
- b. Provisions for legislative increases should not be written into future contracts excepting those for Career Agents and Contract Employees. In addition, every effort should be made to eliminate such clauses from present agent contracts at the time such contracts are renewed or amended.
- c. No change shall be effected in the compensation rates prescribed in the contracts of Contract Consultants excepting in conformity with possible changes in the compensation rates of appointed CIA consultants.
- d. Contracts with agents which specify leave in accordance with agency regulations shall be administered in accordance with such regulations as modified above in the discussion on Career Agents.
- e. Contractual leave provision should normally never be in excess of those granted staff employees unless warranted by unusual circumstances.

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